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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/003,196
Filing Date: October 29, 2001
Appellant(s): MASSEY, KENT

John J. Marshall
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 7, 2008 appealing from the
Office action mailed June 22, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

F. The provisional rejection of claim 1 for nonstatutory type double patenting of co-pending application 10/003187 is withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 5,465,384	BEJAN ET AL	11/1995
US 5,754,770	SHIELS ET AL	05/1998
US 6,553,178	ABECASSIS	04/2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 9-18, 20-22, 24-31 and 34 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows.

Claim 9 (and dependent claims) recites “an interactive entertainment embodied in a digital video storage medium with a data structure readable by a digital video player, and having an overall storyline to be delivered to a viewer, said data structure.” Claim 9 recites a data structure, which does not impart functionality to a computer or computing device, and is thus considered nonfunctional descriptive material. Such nonfunctional descriptive material, in the absence of a functional interrelationship with a computer, does not constitute

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a statutory process, machine, manufacture or composition of matter and is thus non-statutory per se.

Claims 18 (and dependent claims) and 34 recite “an interactive entertainment embodied in a digital video storage medium with a data structure readable by a digital video player and having an overall storyline to be delivered to a viewer, said data structure.” Claims 18 recites a data structure which does not impart functionality to a computer or computing device, and is thus considered nonfunctional descriptive material. Such nonfunctional descriptive material, in the absence of a functional interrelationship with a computer, does not constitute a statutory process, machine, manufacture or composition of matter and is thus non-statutory per se.

Claims 24, 27 and dependent claims recite “an interactive entertainment embodied in an electronic format with a readable data structure and having an overall storyline to be transmitted to a viewer over a communications network.” Claims 24 and 27 recite a data structure, which does not impart functionality to a computer or computing device, and is thus considered nonfunctional descriptive material. Such nonfunctional descriptive material, in the absence of a functional interrelationship with a computer, does not constitute a statutory process, machine, manufacture or composition of matter and is thus non-statutory per se.

Claims 30-31 recite “an interactive entertainment embodied in an electronic format with a readable data structure and having an overall storyline to be transmitted to a viewer over a broadcast network.” Claims 30 and 31 recite a

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data structure, which does not impart functionality to a computer or computing device, and is thus considered nonfunctional descriptive material. Such nonfunctional descriptive material, in the absence of a functional interrelationship with a computer, does not constitute a statutory process, machine, manufacture or composition of matter and is thus non-statutory per se.

Such nonfunctional descriptive material, in the absence of a functional interrelationship with a computer, does not constitute a statutory process, machine, manufacture or composition of matter and is thus non-statutory per se.

Claim 1-4, 6-10, 18, 20-22, 24, 27, 30, 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Bejan et al (US 5,465,384 and hereafter referred to as "Bejan").

Regarding Claims 1, Bejan discloses a method for structuring scene sequences for interactive entertainment (Figure 3), the method comprising the steps of:

(a) providing a plurality of potentially viewable scenes to deliver an overall storyline to a viewer (Column 9, lines 39-67, Column 10, lines 1-25);

(b) delivering some of the scenes to the viewer as branching points at which alternative decisions are presented that will determine the next scene sequence or subsequent act to be presented to the viewer (Column 8, lines 40-50, Column 9, lines 39-67, Column 10, lines 1-25);

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(c) for each alternative decision at a branching point, having available to present to the viewer a scene sequence corresponding to the decision (Column 9, lines 55-66);

(d) enabling the viewer to select one of the alternative decisions; (Column 8, lines 3-6);

(e) in response to the viewer's selected one of the alternative decisions, presenting the scene sequence that corresponds to the decision (Column 8, lines 47-50);

(f) structuring the branching points and their related scene sequences such that essentially every set of scene sequences determined by viewer decisions eventually reaches at least one linking scene containing content that is not dependant upon the particular decisions made prior to the linking scene (Column 10, lines 5-12);

(g) producing one or more sets of variation scenes that introduce content that reflects the consequences of previous decisions selected from among the alternative decisions presented prior to the linking scene, each set of variation scenes being associated with a scene that is viewable after the linking scene or after intersection scene or linking scene branching continues (Column 8, lines 40-50, Column 9, lines 39-67, Column 10, lines 1-25); and

(h) when the viewer is brought to a scene sequence that contains a set of variation scenes, interspersing into the scene sequence the variation scene corresponding to the viewer's selected one of the alternative decisions from

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among the alternative decisions presented prior to the linking scene (Column 9, lines 39-67, Column 10, lines 1-25).

Regarding Claims 4 and 18, Bejan discloses a method for structuring scene sequences for interactive entertainment (Figure 3) and an interactive embodiment is embodied in a digital video storage medium with a data structure readable by a digital video player and having an overall storyline to be delivered to a viewer structure readable by the video player (Figure 3, Column 5, lines 50-61, 62-67, Column 6, 1-8), the method and data structure comprising the steps of

(a) providing a plurality of potentially viewable scenes to deliver an overall storyline to a viewer in a plurality of acts, each act containing potentially viewable scenes (Figure 3, 2nd Branch A, 2nd Branch B, 3rd Branch C);

(b) in at least one of the acts, presenting to the viewer alternative decisions that will determine an order in which at a subsequent act will be presented from which the viewer selects one of the alternative decisions (Figure 3);

(c) enabling the viewer to select one of the alternative decisions (Column 8, lines 3-6);

(d) and in each act that can be presented in a different order, providing neutral scenes in which the content is not dependent upon the order in which the act is viewed, and providing sets of alternative scenes in which the content is dependent upon the order in which the act is viewed (Column 10, lines 5-12);

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and providing alternative connecting scenes leading into and out of the act

(Figure 3, Column 9, lines 39-67, Column 10, lines 1-22);

(e) And prompting the viewer to make one of the alternative decisions that will determine the order of a subsequent act (Figure 3);

(f) presenting to the viewer, in the act determined by his decision, neutral scenes of the act interspersed with alternative scenes that reflect the consequences of previous decisions selected from among the alternative decisions presented prior to the linking scene that correspond to the viewer's selected one of the alternative decisions (Column 9, lines 39-67, Column 10, lines 1-25). Regarding Claim 18, Bejan discloses software enabled coding for presenting to the viewer an alternate scene in the act that is appropriate for the order in which the act is viewed (Figure 3, Column 5, lines 50-67, Column 6, lines 1-8, 62-64, Column 7, lines 6-25). The Microsoft Press 3rd edition computer Dictionary defines a data structure as an organization scheme, such as a record or array that can be applied to data to facilitate interpreting the data or performing operations on it.

Regarding Claim 7, Bejan discloses a method for structuring scene sequences for interactive entertainment (Figure 3), the method comprising the steps of

(a) providing a plurality of potentially viewable scenes to deliver an overall storyline to a viewer in a plurality of acts, each act containing potentially viewable scenes (Figure 3, 2nd Branch A, 2nd Branch B, 3rd Branch C);

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(b) in at least one of the acts, presenting to the viewer alternative decisions that will determine an order in which at a subsequent act will be presented from which the viewer selects one of the alternative decisions (Figure 3);

(c) enabling the viewer to select one of the alternative decisions (Column 8, lines 3-6);

(d) in each act that can be presented in a different order, providing alternative connecting scenes leading into and out of the act, wherein the alternative connecting scenes contain content that is related to the order in which the act is selected for viewing or selecting from content from the branching scenes or each act has a different scenes leading in and out of the act such as 2nd branch A has 3rd A, B, and C scenes and 2nd Branch B has 3rd D, E, and F scenes, and so on (Figure 3) and then

prompting the viewer to make a decision to determine the subsequent act (Figure 3, Column 9, lines 61-67, Column 10, lines 1-21) and

presenting to the viewer, in the subsequent act determined by his decisions, the alternative connecting scene that reflect the order in which the act is selected for viewing or an order of scenes is displayed based on the user's selections (Figure 3).

Regarding Claims 9, 24 and 30, Bejan discloses an interactive embodiment is embodied in a digital video storage medium with data structure readable by digital video player (Column 5, lines 50-61, 62-67, Column 6, 1-8,

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Figure 1, 36, Figure 3), an interactive entertainment embodied in electronic format with a readable data structure and having an overall storyline to be transmitted to a viewer (Column 5, lines 50-61, 62-67, Column 6, 1-8, Figure 1, 36, Figure 3), said interactive entertainment comprising: (a) a plurality of potentially viewable scenes (Figure 3, Column 9, lines 39-67, Column 10, lines 1-22); (b) some of the scenes defining branching points of the entertainment by presenting alternative decisions from which the viewer selects one of the alternative decisions (Figure 3, Column 9, lines 39-67, Column 10, lines 1-22); (c) for each alternative decision at a branching point, a sequence of scenes corresponding to the decision (Figure 3, Column 9, lines 39-67, Column 10, lines 1-22); (d) the branching points and their related scene sequences being structured such that essentially every set of scene sequences determined by viewer decisions eventually reaches at least one linking scene containing content that is not dependant upon the particular decisions made prior to the linking scene (Column 10, lines 1-22; and (e) one or more sets of variation scenes that introduce content that reflects the consequences of previous decisions selected from among the alternative decisions presented prior to the linking scene and that corresponds to the viewer's selected one of the alternative decision, each set of variation scenes being associated with a scene that is viewable after the linking scene (Figure 3, Column 9, lines 39-67, Column 10, lines 1-22) and software enabled coding or a program for interspersing in a scene sequence a variation scene that is selected from a set of variation scenes associated with the scene sequence wherein the selection is based upon previous decisions made

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prior to the linking scene (Column 5, lines 50-67, Column 6, lines 1-8, 62-64, Column 7, lines 1-24, Column 9, lines 55-67, Figure 3) and software enabled coding or a program for identifying in a scene sequence a variation scene that is associated with that scene sequence, wherein the selection is based upon previous decisions made prior to the linking scene (Column 5, lines 50-67, Column 6, lines 1-8, 62-64, Column 7, lines 1-24, Column 9, lines 55-67). The Microsoft Press 3rd edition computer Dictionary defines a data structure as an organization scheme, such as a record or array that can be applied to data to facilitate interpreting the data or performing operations on it.

Regarding Claims 27 and 31, Bejan discloses an interactive entertainment embodied in a videodisk player and electronic format with a readable data structure and having an overall storyline to be delivered to a viewer (Figure 1, 36, Figure 3, Column 5, lines 50-67, Column 6, lines 1-8), an interactive entertainment embodied in electronic format with a readable data structure and having an overall storyline to be delivered to a viewer (Figure 1, 36, Figure 3, Column 5, lines 50-67, Column 6, lines 1-8,), said interactive entertainment comprising: (a) a plurality of potentially viewable scenes grouped as a plurality of acts or branches (Figure 3, Column 9, lines 39-67, Column 10, lines 1-22); (b) sat least one of the acts having a scene that presents at least one set of alternative decisions from which the viewer selects on of the alternative decisions (Figure 3, Column 9, lines 39-67, Column 10, lines 1-22); (c) each act that can be presented in a different order having neutral scenes in which the content is

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not dependant upon the relative order in which the act is viewed, and sets of alternative scenes in which the content is dependant upon the relative order in which the act is viewed (Figure 3, Column 9, lines 39-67, Column 10, lines 1-22); (d) software enabled coding or a program for presenting to the viewer the alternative content in the act that is appropriate for the order in which the act is viewed (Column 5, lines 50-67, Column 6, lines 1-8, Column 7, lines 1-24, Column 8, lines 40-50, Column 9, lines 39-67, Column 10, lines 1-22). The Microsoft Press 3rd edition computer Dictionary defines a data structure as an organization scheme, such as a record or array that can be applied to data to facilitate interpreting the data or performing operations on it.

Regarding Claim 2, Bejan discloses all the limitations of Claim 1. Bejan discloses producing the variation scenes in a set with essentially the same characters and props, such that the variation scenes in a set differ from each other by the dialog and expression of at least one character or a scene is displayed to the audience and the audience is presented with three choices on the direction of the plot and can select a character (Column 8, lines 40-50, Column 9, lines 39-45).

Regarding Claims 3, 6 and 8, Bejan discloses all the limitations of Claims 1, 4 and 7 respectively. Bejan discloses the entertainment may be viewed simultaneously by more than one interactive viewer, further comprising the steps of: (a) delivering some of the scenes to each interactive viewer as branching points at which alternative decisions are presented that will determine the next

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scene sequence to be presented (Column 8, lines 40-50, Column 9, lines 39-45); and (b) enabling different interactive viewers to make at least one of the alternative decisions (Column 8, lines 3-6).

Regarding Claims 10, 20, and 22 Bejan discloses all the limitations of Claims 9, 18, and 21 respectively. Bejan discloses a digital video player (Figure 1, 34) having means for enabling the viewer to make the alternative decisions, and (Column 8, lines 3-6) (b) software able to interpret the data structure in the storage medium for presenting the scene sequences that corresponds to the viewer's decisions, for identifying when the viewer is brought to a scene sequence that contains a set of variation scenes, and for interspersing into that scene sequence the variation scene from the set that is related to the particular decision made or in order to control the videodisk player based on the polling computer and main computer must have software and data concerning the images stored in the video disk (Column 5, lines 44-67, Column 6, lines 1-67, Column 7, lines 1-3, 26-45). Bejan discloses a suitable software system, which allows the main computer to store information concerning the time code or other address of images stored on the videodisk (Column 6, lines 50-61).

Regarding Claim 21, Bejan discloses all the limitations of Claim 18. Bejan discloses that the selectable-order acts have alternative connecting scenes leading into and out of the act including leading in scenes 2nd Branch A, B, C and leading out to 3rd A, B, C (Figure 3).

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Claims 18, 20-22, 27-29, 31-34 is rejected under 35 U.S.C. 102(b) as being anticipated by Shiels et al (US 5,754,770 and hereafter referred to as "Shiels").

Regarding Claims 18, 27, 31, 32 and 34, Shiels discloses an interactive entertainment embodied in an local storage medium with a data structure readable by a digital video player having an overall storyline to be delivered to a viewer (Figure 3, Figure 6, Column 3, lines 44-67, Column 4, lines 18-37), an interactive entertainment embodied in an electronic format with a readable data structure having an overall storyline (Figure 3, Figure 6, Column 3, lines 44-67, Column 4, lines 18-37), an interactive entertainment embodied in an electronic format with a readable data structure having an overall storyline (Figure 3, Figure 6, Column 3, lines 44-67, Column 4, lines 18-37), a method for providing interactive entertainment in periodic serial format (Abstract, Column 6, lines 34-44), and an interactive entertainment embodied in a storage with a data structure and readable by a digital video player and having an overall storyline (Column 3, lines 44-67, Column 4, lines 18-37), the method comprising the steps of and the interactive entertainment: (a) providing a plurality of potentially viewable scenes to deliver an overall storyline to a viewer in a plurality of periodic episodes (Figure 6, B, D), each episode containing potentially viewable scenes; (b) in at least one of the episodes, presenting to the viewer alternative decisions that will determine an order in which a subsequent episode will be presented (Column 6, lines 34-44); (c) enabling the viewer to select one of the alternative decisions (Column 6, lines 29-29); (d) in each episode that can be presented in a different

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order, providing alternative connecting scenes leading into and out of the episode or having scenes A leading into the episodes and C, H, E, lead out of the episodes (Figure 6, B, D, A); (e) prompting the viewer to select one of the alternative decisions that will determine the order of a subsequent episode (Column 6, lines 34-44); (f) presenting to the viewer, in the subsequent episode determined by his decision, the alternative connecting scenes that are appropriate to the order in which the episode is presented (Column 4, lines 18-57, Column 6, lines 3-66). Regarding Claims 18, 27, 31, Shiels discloses software enabled coding for presenting to the viewer, in the subsequent episode determined by his decision, the alternate scene in the act that are appropriate to the order in which the episode is presented (Column 4, lines 18-57, Column 6, lines 3-66). The Microsoft Press 3rd edition computer Dictionary defines a data structure as an organization scheme, such as a record or array that can be applied to data to facilitate interpreting the data or performing operations on it.

Regarding Claim 21, Shiels discloses all the limitations of Claim 18.

Shiels discloses the selectable-order acts have alternative connecting scenes leading into and out of the act or B and D have A leading in and scenes F, E, H, and C leading out (Figure 6).

Regarding Claims 20 and 22, Shiels discloses limitations of Claims 18 and 22. Shiels discloses a digital video player, comprising; (a) means for enabling the viewer to make the alternative decisions that determine the order of the selectable-order acts (Column 6, lines 25-30, Figure 1, Figure 5) and (b) the CPU

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controls the operations of the set top box by receiving program information specify how the processor is to handle audio and video stream (Column 4, lines 1-67, Column 5, lines 1-8) which necessarily includes software for presenting to the viewer, in the acts determined by his decision, the connecting scenes appropriate to the order in which the act is presented.

Regarding Claim 28, Shields discloses all the limitations of Claim 27.

Shields discloses the interactive entertainment is transmitted to a viewer over a communications network in real time or the VOD server transmits data over a communications network to STB when then displays data on TV (Column 3, lines 59-67).

Regarding Claim 29, Shields discloses all the limitations of Claim 27.

Shields discloses the interactive entertainment is transmitted to a viewer over a communications network (Column 3, lines 50-53) and stored on a storage device (Column 4, lines 1-55).

Regarding Claim 33, Shields discloses all the limitations of Claim 32. Shields discloses the entertainment may be viewed simultaneously by more than one interactive viewer, further comprising the steps of; (a) presenting to each interactive viewer alternative decisions that will determine an order in which a different subsequent episode will be presented or the user will be shown a menu of options on the screen of the television with the menu displaying the alternative decision that the user may make for the narrative (Column 6, lines 34-44); and (b) enabling each interactive viewer to make at least one of the alternative

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decisions or a user may make at least one alternative decision by using UID (Column 6, lines 25-29).

Claims 11, 13, 14, 16, 17, 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bejan in view of Shiels.

Regarding Claim 11, Bejan discloses all the limitations of Claim 10. Bejan is silent on digital video player is a general-purpose computer and monitor. Shiels discloses the digital video player can be in the form of a personal computer (Column 10, lines 27-39). Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify Bejan to use a general purpose computer and monitor as the digital video player (Column 10, lines 27-39) as taught by Shiels for the benefit of using a well known device that is owned by many viewers and reduces overall costs.

Regarding Claim 13, Bejan discloses all the limitations of Claim 10. Bejan is silent on digital video player is a set top box (STB) and a television. Shiels discloses the use of a STB, which connected to a television (Column 3, lines 27-42). Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify Bejan to use a STB, which connected to a television (Column 3, lines 27-42) as taught by Shiels for the benefit of using a well known device that is owned by many viewers and reduces overall costs.

Regarding Claim 14, Bejan discloses all the limitations of Claim 10. Bejan is silent on digital video player is a personal video recorder (PVR) having digital

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storage capability and a television. Shiels discloses the use of local storage, which many comprise a CD player or digital video player connected to a television via a STB (Column 3, lines 43-50). Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify Bejan to use a PVR with digital storage capacity and a television (Column 3, lines 43-50) as taught by Shiels for the benefit of using a well known device that is owned by many viewers and reduces overall costs.

Regarding Claim 16, Bejan discloses all the limitations of Claim 10. Bejan is silent on the digital video player is a television having computing capability, wherein the television is adapted to present digital video to a user. Shiels discloses the digital video player is a television having computing capability, wherein the television is adapted to present digital video to a user or that necessary computing can be stored in a television (Column 10, lines 27-39). Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify Bejan to use a television as a digital video player to present digital video to a user (Column 10, lines 27-39) as taught by Shiels for the benefit of using a well known device that is owned by many viewers and reduces overall costs.

Regarding Claim 17, Bejan discloses all the limitations of Claim 10. Bejan is silent on the digital video player is a cable television system having a computer located at its head-end and a television. Shiels discloses the digital video player is a cable television system having a computer located at its head-end and a television (Column 3, lines 43-55). Therefore, it would have been obvious to one

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ordinary skill in the art at the time the invention was made to modify Bejan to include the digital video player is a cable television system having a computer located at its head-end and a television (Column 3, lines 43-55) as taught by Shiels for the benefit of using a well known device that is owned by many viewers and reduces overall costs.

Regarding Claim 25, Bejan discloses all the limitations of Claim 24. Bejan is silent on the interactive entertainment is transmitted to a viewer over a communications network in real time. Shiels discloses the interactive entertainment is transmitted to a viewer over a communications network in real time or the VOD server transmits data over a communications network to STB when then displays data on TV (Column 3, lines 59-67). Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify Bejan to include the interactive entertainment is transmitted to a viewer over a communications network in real time (Column 3, lines 59-67) as taught by Shiels for the benefit of allowing the viewer to make requests for interactive programming in their own time.

Regarding Claim 26, Bejan discloses all the limitations of Claim 24. Bejan is silent on the interactive entertainment is transmitted to a viewer over a communications network and stored on a storage device. Shiels discloses the interactive entertainment is transmitted to a viewer over a communications network (Column 3, lines 50-53) and stored on a storage device (Column 4, lines 1-55). Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify Bejan to include the interactive

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entertainment is transmitted to a viewer over a communications network (Column 3, lines 50-53) and stored on a storage device (Column 4, lines 1-55) as taught by Shiels for the benefit of storing a plurality of branch scenes that may or may not be used.

Claims 12, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bejan in view of Abecassis (US 6,553,178).

Regarding Claim 12, Bejan discloses all the limitations of Claim 10. Bejan is silent on the digital video player is a game player and television. In analogous art, Abecassis discloses the digital video play (Figure 5, 500) is a game player and a television (Column 19, lines 52-65), which is connected to a TV (Figure 9, 951, 931-936). Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify Bejan to include the digital video player is a game player and television (Column 19, lines 52-65, Figure 5, 500, Figure 9, 931-936, 951) as taught by Abecassis for the benefit of using a well known device that is owned by many viewers and reduces overall costs.

Regarding Claim 15, Bejan discloses all the limitations of Claim 10. Bejan is silent on the digital video player the digital video player is a computer and a television. Abecassis discloses the digital video player is a computer and a television (column 18, lines 42-45, Column 19, 66-67; Column 21, lines 36-39, Figure 9, 931-936, 951). Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify Bejan to include the digital video player is a computer and a television (column 18, lines 42-45,

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Column 19, 66-67; Column 21, lines 36-39, Figure 9, 931-936, 951) as taught by Abecassis for the benefit of using a well known device that is owned by many viewers and reduces overall costs.

(10) Response to Argument

A. 101 Rejection

The appellant states the patentability of data structures is described in MPEP 2106.01 (Page 11). The appellant states that when the claim is made to a computer readable medium encoded with a data structure the claim is statutory (Page 11).

A.1 Claim 9

The appellant argues that a data structure imparts functionality to a digital video player ('computer" and therefore is functional statutory subject matter (Pages 11-12).

In response to the argument, the appellant states that the data structure imparts functionality because the claim discloses "an interactive entertainment embodied in a digital video storage medium with a data structure readable by a digital video player, and having an overall storyline to be delivered to a viewer, said data structure."

A data structure does not impart functionality to a computer or computing device, and is thus considered nonfunctional descriptive material. The definition

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of data structure as defined by 2106.01 is a "physical or logical relationship among data elements, designed to support specific data manipulation functions."

The claim recites the data structure has potentially viewable scenes or software enabled coding which is data. Nonfunctional descriptive material includes a compilation or mere arrangement of data. When nonfunctional material is recorded on some computer medium or computer, it is not statutory because such nonfunctional descriptive material, in the absence of a functional interrelationship with a computer, does not constitute a statutory process, machine, manufacture or composition of matter and is thus non-statutory per se.

A.2 Claims 10-17

Regarding Claims 10-17, the appellant argues that claims are dependant on claim 9 and thus stand as a group.

In response to the arguments, claims 10-17 depend from Claim 9. Please see response to arguments of Claim 9 in section A.1.

A.3 Claims 18 and 21

Regarding Claims 18 and 21, the appellant argues that a data structure with potentially viewable scenes and has software enabled coding encoded on a computer readable medium imparts functionality and therefore is functional statutory subject matter. Claim 21 depends from Claim 18 and includes same disclosed limitations and further additional limitations.

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In response to the arguments, please see response to arguments of Claim 9 in section A.1.

A.4 Claims 20 and 22

Regarding Claims 20 and 22, the appellant argues that claims are dependant on claim 18 and thus stand as a group.

In response to the arguments, claims 20 and 22 depend from Claim 18 and Claim 21. Please see response to arguments of Claim 9 in section A.1.

A.5 Claims 24-26

Regarding Claims 24-26, the appellant argues that a data structure with potentially viewable scenes and has software enabled coding encoded on a computer readable medium imparts functionality and therefore is functional statutory subject matter. Claims 25 and 26 depend from Claim 24 and includes same disclosed limitations and further additional limitations.

In response to the arguments, please see response to arguments of Claim 9 in section A.1.

A.6 Claims 27-29

Regarding Claims 27-29, the appellant argues that a data structure with potentially viewable scenes and has software enabled coding encoded on a computer readable medium imparts functionality and therefore is functional

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statutory subject matter. Claims 28 and 29 depend from Claim 27 and includes same disclosed limitations and further additional limitations.

In response to the arguments, please see response to arguments of Claim 9 in section A.1.

A.7 Claim 30

Regarding Claim 30, the appellant argues that a data structure with potentially viewable scenes and has software enabled coding encoded on a computer readable medium imparts functionality and therefore is functional statutory subject matter.

In response to the arguments, please see response to arguments of Claim 9 in section A.1.

A.7 Claim 31

Regarding Claim 31, the appellant argues that a data structure with potentially viewable scenes and has software enabled coding encoded on a computer readable medium imparts functionality and therefore is functional statutory subject matter.

In response to the arguments, please see response to arguments of Claim 9 in section A.1.

B. Claims 1-4, 6-10 18, 20-22, 24, 27, 30 and 31

The appellant states that Bejan describes an episode divided into three parts: i) an introduction, ii) multi perspective act and iii) a branching act (Page

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15). The appellant argues that Bejan does not introduce into the act any variable content that reflects a consequence of previous decisions because if the audience selected character 1 and switched to character 2, the audience would see the same character 2 image even if they had selected character 3 first (Pages 16-17). The appellant also argues that the audience can only change character perspective during the multi-perspective act but can not change the character after the ensuing branching act (Page 17). The appellant argues that Bejan does not teach any use of sets of alternative scenes to reflect consequences of decision made before entering the branching act (Page 17). The appellant states that although that branches lead to an Intersection Scene and further branching is allowed and it leads to a credits scene. The appellant last argues that Bejan however does not teach that anything is varied in the Intersection Scene or Credits.

In response to the arguments, the audience can change the perspective during the perspective act numerous times and still view a coherent and chronological story (Column 7, lines 29-45). Bejan discloses uses different branching scenes before the intersection scene (Figure 3). Bejan discloses allowing a user to choose a 4th branch scene after the intersection scene which relates to the content of the branching scenes including relating to the same character perspective which reflects throughout the show (Column 9, lines 59-67, Column 10, lines 1-25). Please see arguments to each specific claim and the corresponding responses.

B.2 Claims 1-3**B.2.1 Claim 1**

Regarding Claim 1, the appellant argues that Bejan does not disclose limitations “(g) producing one or more sets of variation scenes....” Or (h) “when the viewer is brought to a scene sequence...” (Pages 18-19). The appellant argues that Bejan does not alter the content of sequences that may be viewed after passing the linking point (Page 19) and these variation scenes are used to modify the content of certain scenes that follow a linking scene (Page 19). The appellant argues that the invention is different from Bejan because the variation scenes reflect the consequences of previous decisions prior to the linking scene. The appellant further argues that if a decision is made in Bejan to follow a particular character after the multi-perspective act, the decision controls only the set of scenes that can be selected and viewed after the decision. However, the appellant argues that Bejan does not allow scenes to be varied by interspersing into a scene sequence to the viewer’s selected decision presented prior to the linking scene.

In response to the argument, the examiner respectfully disagrees. Bejan discloses a user can make several decisions including choosing a character (Figure 3, Character Selections), allowing the character or perspective to be changed numerous times during the multi-perspective act (Column 7, lines 29-45), and particular branches of scenes to watch (Figure 3, Branch Selections). Bejan discloses that branching continues from the branching scene following an

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intersection scene and intersection scenes brings all the various branches together in time (Column 10, lines 1-21). The appellant's argument of after intersection scene branching simply continues is not persuasive because Bejan further discloses that the first decision of following a particular character is made prior to the intersection scene and that decision is reflected throughout the entire show for each selected branch including after the 4th branch after the linking scene (Column 9, lines 56-58). Therefore, branching scenes are all related because they have the same content of a particular character and reflect the consequences of previous decisions. Bejan disclose a scene sequence with variation or branching scenes that corresponds to alternative decisions, such as selecting 2nd Branch A and then 3rd Branch C or 2nd Branch C and 3rd Branch H, based on all the decisions a user makes prior to the intersection or linking scene (Column 9, lines 59-67, Column 10, lines 5-10). The invention of Bejan still meets the limitations disclosed in Claim 1.

B.2.2 Claim 2

Regarding Claim 2, the appellant argues that Bejan does not teach producing variation scenes in a set with essentially the same characters and props, such that the variation scenes in a set differ from each other by the in a set differ from each other by dialog and expression of at least one character because this is done by re-shooting a few exchanges between characters as set of variation scenes (Pages 20-21). The appellant further argues that claim 3 depends from claim 1 and therefore is not anticipated (Page 21).

In response to the arguments, Bejan discloses that same characters and props and that variation scenes in a set differ from each other in dialog and expression as the decisions of the branching cause different scenes to be produced scene or a scene is displayed to the audience and the audience is presented with three choices on the direction of the plot and can select a character (Column 8, lines 40-50, Column 9, lines 39-45). The claim language does not include re-shooting a few exchanges as argued by the appellant. See above response to arguments of Claim 1 as in section B.2.1 for Claims 2 and 3.

B.3 Claims 4 and 6

Regarding Claims 4 and 6, the appellant argues that Bejan does not teach acts that can be presented in a different order (Page 21). The appellant further argues that Bejan does not teach b) in at least one of the acts, presenting to the viewer alternative decisions that will determine an order in which at a subsequent act will be presented and c) enabling the viewer to select one of the alternative decisions (Page 21). The appellant argues that Bejan tries to meet this by explaining an episode might have only one of these acts and the order can be reversed such that multi-perspective act could follow the branching act, but Bejan does not disclose or suggest reversal of order would be determined by the viewer (Pages 21-22). Therefore, Bejan does not disclose steps d) in each act that can be presented in a different order, providing neutral scenes in which the content is not dependent upon the order in which the act is viewed, and providing sets of alternative scenes in which the content is dependent upon the order in which the

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act is viewed; and providing alternative connecting scenes leading into and out of the act; (e) and prompting the viewer to make one of the alternative decisions that will determine the order of a subsequent act; (f) presenting to the viewer, in the act determined by his decision, neutral scenes of the act interspersed with alternative scenes that reflect the consequences of previous decisions selected from among the alternative decisions presented prior to the linking scene that correspond to the viewer's selected one of the alternative decisions (Page 22). The appellant further argues that Bejan does not disclose presenting neutral scenes interspersed with alternative scenes (Page 22-23).

In response to the argument, the examiner respectfully disagrees. Bejan discloses b) in the multi-perspective act, presenting alternative selections of characters and based on the character choice will determine an order in which a subsequent or branching act will be presented with branching scenes reflected by the character choice (Figure 3) and c) enabling the viewer to select alternative decisions (Column 8, lines 3-6). Bejan discloses that a branching action can be presented in a different order based on the character choice which will allow selecting alternative branch scenes (Figure 3, Column 9, lines 59-67, Column 10, lines 1-25). Bejan further discloses that the alternative decision of selecting a character which determines the order of the branching act with branching scenes (Figure 3). Bejan also discloses that the character choice is made prior to the intersection scene and that decision is reflected throughout the entire show including after the linking scene (Column 9, lines 56-58). See response to arguments of Claim 1 in section B.2.1. Claim 6 depends on Claim 4.

B.4 Claims 7 and 8

Regarding Claims 7, the appellant argues that Bejan does not teach acts in different order (Page 23). The appellant argues that there is no way for the viewer to present the Intersection Section before the Branching act but the viewer can not select 4th branch scene before a 2nd and 3rd branch (Page 23). The appellant argues that the Examiner's misinterpretation is that since a viewer can select any of the multiple paths between linking scenes (Page 23). The appellant argues that the meaning of the word "order" is used in claim 4. Also Bejan does not teach steps (d), (e), and (f) in the amendment. The new limitations are "(d) in each act that can be presented in a different order, providing alternative connecting scenes leading into and out of the act, wherein the alternative connecting scenes contain content that is related to the order in which the act is selected for viewing" and "(f) presenting to the viewer in the subsequent act determined by his decision the alternative connecting scent that reflects the order in which the act is selected for viewing" (Page 24). The appellant last argues that Claim 8 is patentable because it depends on Claim 7.

In response the argument, the examiner respectfully disagrees. The appellant is bringing elements from appellant's invention and not claimed in Claim 4 such as scenes are placed in different orders such as 4th branch scene are placed before 2nd and 3rd branches. Bejan discloses that acts are presented in different order or 2nd branch A to 3rd branch A, B, C to intersection scene or 2nd branch B to 3rd branches D, E, F, and so on. Bejan discloses plurality of scenes (Figure 3, branching scenes).

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The claims do not explicitly disclose that the alternative connecting scenes in acts are the same scenes, which are placed out order for selection by the user. Bejan discloses (d) in each act that can be presented in a different order, providing alternative connecting scenes leading into and out of the act, wherein the alternative connecting scenes contain content that is related to the order in which the act is selected for viewing or selecting from content from the branching scenes (Figure 3) and then prompting the viewer to make a decision to determine the subsequent act (Figure 3) and presenting to the viewer, in the subsequent act determined by his decisions, the alternative connecting scene that reflect the order in which the act is selected for viewing or an order of scenes is displayed based on the user's selections (Figure 3). See response to arguments for Claim 4 in section B.3.

Claim 8 depends on Claim 7. See response for Claim 7.

B.5 Claims 9-10

Regarding Claim 9, the appellant argues that Bejan does not disclose limitations (e) and (f) of claim 9. The appellant argues that Bejan does not disclose one or more variation scenes that introduce content that reflect consequences of previous decisions following the linking scene (Page 25). The appellant argues Claim 10 is patentable because it depends from Claim 9.

In response to the argument, see response to arguments for Claim 1 in section B.2.1. Claim 10 depends on Claim 9; see the response for Claim 1.

B.6 Claims 18 and 20

Regarding Claim 18, the appellant argues that Bejan does not disclose elements (b), (c) or (d) specifically that Bejan does teach presentation of acts in different order. The appellant further argues that scene portion described at Column 10, lines 12-21 to be neutral and that Bejan does not suggest presenting neutral scenes in which content is not dependent upon relative order and sets of alternative scenes (Pages 26-27).

In response to arguments, please see the response to arguments of Claim 1 in section B.2.1 and Claim 4 in section B.3. Bejan discloses neutral or intersection scenes that do not depend on the content or the relative order of the act as the user can select 2nd Branch A and 3rd Branch C or 2nd Branch C and 3rd Branch H (Figure 3). Also, Bejan discloses software enabled coding or a program for presenting to the viewer the alternative content in the act that is appropriate for the order in which the act is viewed (Column 6, lines 62-67, Column 7, lines 1-24, Column 8, lines 40-50, Column 9, lines 39-67, Column 10, lines 1-22). Claim 20 depends from Claim 18. See above response for Claim 18.

B.7 Claims 21 and 22

Regarding Claims 21 and 22, the appellant argues that the claims are dependent upon Claim 18 and therefore is patentable (Page 27).

In response to the arguments, see response to claim 18 in section B.6.

B.8 Claim 24

Regarding Claim 24, the appellant argues that Bejan does not disclose elements (e) one or more sets of variation scenes that introduce content that reflects the consequences of previous decision selected from alternative decision prior to the linking scene and correspond to the selected alternative decision and (f) software enabled coding for identifying in a scene sequence a variation scene that is selected from a set of variation scenes associated with that scene sequence wherein the selection is based upon previous decisions made prior to the linking scene (Pages 27-28). The appellant also argues that scene portions such as walking down a hall are not portions for a variation scene (pages 28).

In response to the arguments, the claim requires viewer's decision not character's decisions. See response to arguments for Claim 1 in section B.2.1. Bejan discloses software enabled coding or a program for identifying in a scene sequence a variation scene that is associated with that scene sequence, wherein the selection is based upon previous decisions made prior to the linking scene (Column 6, lines 62-67, Column 7, lines 1-24, Column 9, lines 55-67).

B.9 Claim 27

Regarding Claim 27, the appellant argues that Bejan does not disclose elements (b), (c) or (d). The appellant argues that Bejan does not teach or suggest presentation of acts in different order (Pages 28-29). The appellant makes similar arguments to Claim 7. The appellant amended claim limitation (d) with software enabled coding for presenting.

In response to arguments, see response to arguments of Claim 7 in section B.4. Also, Bejan discloses software enabled coding or a program for presenting to the viewer the alternative content in the act that is appropriate for the order in which the act is viewed (Column 6, lines 62-67, Column 7, lines 1-24, Column 8, lines 40-50, Column 9, lines 39-67, Column 10, lines 1-22).

B.10 Claim 30

Regarding Claim 30, the appellant argues that Bejan does not disclose elements (e) and (f) (Pages 29-30). The appellant added claim limitation (f) with software enabled coding for identifying in a scene sequence a variation scene that is selected from a set of variation scenes associated with that scene sequence, wherein the selection is based upon previous decisions made prior to the linking scene (Page 30).

In response to arguments, see response to arguments of Claim 1 in section B.2.1, Claim 9 in section B.5 and Claim 24 in section B.8. Bejan disclose software enabled coding or a program for identifying in a scene sequence a variation scene that is associated with that scene sequence, wherein the selection is based upon previous decisions made prior to the linking scene (Column 6, lines 62-67, Column 7, lines 1-24, Column 9, lines 55-67).

B.11 Claim 31

Regarding Claim 31, the appellant argues that Bejan does not disclose elements (b), (c) or (d). The appellant argues that Bejan does not teach or

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suggest presentation of acts in different order (Pages 30-31). The appellant makes similar arguments to Claim 7.

In response to arguments, see response to arguments of Claim 7 in section B.4, Claim 4 in section B.3 and Claim 1 in section B.2.1. Also, Bejan discloses software enabled coding or a program for presenting to the viewer the alternative content in the act that is appropriate for the order in which the act is viewed (Column 6, lines 62-67, Column 7, lines 1-24, Column 8, lines 40-50, Column 9, lines 39-67, Column 10, lines 1-22).

C. Claims 18, 20-22, 27-29 and 31-33

The appellant argues that Shiels does not disclose a viewer can decide to reverse the order of acts (Page 31).

In response to the arguments, the claims do not disclose the reversal of acts. The claims disclose the order of a subsequent act. Please see arguments to each specific claim and the corresponding responses.

C.2 Claims 18 and 20

Regarding Claim 18, the appellant argues that Bejan does not disclose elements (b), (c) or (d) specifically that Bejan does teach presentation of acts in different order (Pages 32-33). The appellant argues that Shiels does not teach segments viewed in different order because segment H must be viewed prior to segment K (Page 32). The appellant argues that Shiels does not teach sets of alternative scenes in which the content is dependant even upon the path taken to

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arrive there (Page 33). The appellant further argues that Shields's ability to grab a sequence after viewing it and recall it by choice is not the same as alternative scenes that can be inserted (Page 33). The appellant argues that Claim 20 is patentable because it depends for Claim 18 (Page 33)

In response to the argument, Shields discloses that acts are presented in different order or A to G with four possible endings W, X, Y, Z (Figure 6). The viewer chooses alternative decisions, which determine the order of subsequent act chooses the next act and the act reflects the alternative connecting scenes based on the act that the viewer chose (Column 6, lines 5-15). The appellant is using element not claimed such as scenes are placed in different orders. The claims do not explicitly disclose that the alternative connecting scenes in acts are placed out of order for selection by the user. Shields discloses that segments can be reached in different order as claimed for instance path 1 can be segments A, B and H and path two can be segments A, D, E and H (Figure 6). Shields disclose that the alternative scenes are segments can be selected by the user including B, C, D and H (Figure 6). Although, the alternative scenes are not the scenes as found in the appellant's specification, the alternative scenes of Shields meets the limitations as claimed. Shields discloses including other alternative scenes when flashback scenes can be used as part of an episode (Column 9, lines 51-60). Shields discloses software enabled coding for presenting to the viewer, in the subsequent episode determined by his decision, the alternate scene in the act that are appropriate to the order in which the episode is presented (Column 4,

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lines 18-57, Column 6, lines 3-66). See response above for Claim 20 as it depends on Claim 18.

C.3 Claims 21 and 22

Regarding Claims 21 and 22, the appellant argues that they are dependent on Claim 18 (Page 34).

In response to the arguments, see response to arguments for Claim 18 in section C.2.

C.4 Claims 27-29

Regarding Claims 27-29, the appellant argues that Shiels does not disclose elements (b), (c), (d) (Page 34). The arguments are similar to Claim 18 arguments (Page 34). The appellant argues that Shiels does not present neutral scenes presented with alternative scenes that are appropriate to the relative order (Pages 34-35). The appellant states that Claims 28 and 29 depend from Claim 27.

In response to the arguments, see response to arguments for Claim 18 in Section C.2. Shiels discloses neutral scenes presented with alternative scenes that are appropriate to the relative order such as H, J or K which can appear no matter which path is taken (Column 6, lines 10-15, Figure 6). Claims 28 and 29 depend from Claim 27. See response for claim 27 and for Claim 18 in section C.2.

C.5 Claim 31

Regarding Claim 31, the appellant argues that Shiels does not disclose elements (b), (c), (d). The arguments are similar to Claims 18 and 27 arguments (Page 35).

In response to the arguments, see response to arguments for Claim 18 in section C.2 and Claim 27 in section C.4.

C.6 Claims 32 and 33

Regarding Claims 32 and 33, the appellant argues that Shiels does not disclose elements (b), (d), (e), or (f). The appellant argues that Shiels does not disclose or suggest a method for providing interactive entertainment which includes step of providing the entertainment in episodes and allowing the viewer to make alternative decisions that will determine an order in a subsequent episode (Pages 35-36). Also that Shiels does not disclose providing alternative connecting scenes leading into and out of the episode and presenting the viewer with connecting scenes that are providing to the order the episode is presented (Pages 36).

In response to the arguments, Shiels discloses a method for providing interactive entertainment in periodic serial format (Abstract, Column 6, lines 34-44, Column 8, lines 12-19). Shiels discloses a plurality of periodic episodes (Figure 6, B, D, Column 8, lines 12-19), each episode containing potentially viewable scenes (Column 8, lines 12-19, Figure 6). Shiels discloses that a viewer can make alternative decisions in an episode and that can determine

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order of a future episode including using flashback scenes (Column 8, lines 13-30, 60-64, Column 6, lines 34-44). Shiels further in each episode that can be presented in a different order, providing alternative connecting scenes leading into and out of the episode or having scenes A leading into the episodes and C, H, E, lead out of the episodes (Figure 6, B, D, A); prompting the viewer to select one of the alternative decisions that will determine the order of a subsequent episode (Column 6, lines 34-44); presenting to the viewer, in the subsequent episode determined by his decision, the alternative connecting scenes that are appropriate to the order in which the episode is presented (Column 4, lines 18-57, Column 6, lines 3-66, Column 8, lines 12-19). Also, Shiels discloses that acts are presented in different order or A to G with four possible endings W, X, Y, Z. The viewer chooses alternative decisions, which determine the order of subsequent act chooses the next act and the act reflects the alternative connecting scenes based on the act that the viewer chose. The appellant is reading into the invention that scenes are placed in different orders such as segment H must be viewed prior to segment K; there is no mention of these arguments in the claims. Claim 33 depends on Claim 32.

D. Claims 11, 13, 14, 16, 17, 25 and 26

D.1 Claims 11, 13, 14, 16 and 17

The appellant states Claims 11, 13, 14, 16 and 17 depend on Claim 9 (through claim 10). The appellant argues that the claims are patentable because

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necessary teachings of claims 9 and 10 are not asserted in the combination asserted by Bejan and Shiels (Page 37). The arguments are similar to arguments of Claim 9.

In response to the arguments, claims 11, 13, 14, 16 and 17 depend from Claim 9. Please see response to arguments of Claim 9 in section B.5.

D.2 Claims 25 and 26

The appellant states Claims 25 and 26 depend on Claim 24. (The appellant argues that the claims are patentable because necessary teachings of claims 9 and 10 are not asserted in the combination asserted by Bejan and Shiels (Pages 39-40). The arguments are similar to arguments of Claim 24.

In response to the arguments, claims 25 and 26 depend from Claim 24. Please see response to arguments of Claim 24 in section B.8.

E. Claims 12 and 15

The appellant states Claims 12 and 15 depend on Claim 9 (through claim 10). The appellant argues that the claims are patentable because necessary teachings of claims 9 and 10 are not asserted in the combination asserted by Bejan and Shiels (Pages 39-40). The arguments are similar to arguments of Claim 9.

In response to the arguments, claims 12 and 15 depend from Claim 9. Please see response to arguments of Claim 9 in section B.5.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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